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R. Dis **File No.** 572

Collection No.

19 39.

Resident's Office
Bangalore

Pros. / Serial Nos. 1 – 2

(K)

Subject.

Petition of Mr. S. Seethapmiah for permission to erect compound walls to his premises, no: 19, Someswaran Koil Street, C&M/Stn. Bangalore.

Previous References.

565/23.

Later References.

NOTES AND PRECIS.

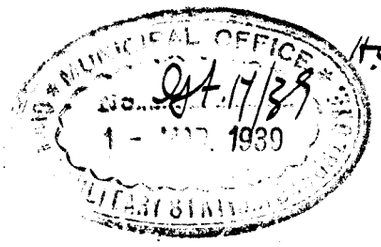
D. No. 1642. S- N. 1.

1 The petition may in the first instance be sent u.o to the District Magistrate for an expression of his views.

27.2.39

28.2.39.

The District Magistrate, C. & M. Stn., Bangalore.
U.O. No. D.1642-39 Dated 28-2-'39.



OFFICE OF THE DISTRICT MAGISTRATE
AND ASSISTANT TO THE RESIDENT,
BANGALORE.

2 The P.U.C. is an appeal against the order dated the 9th January 1939 issued by the District Magistrate and Assistant to the Resident, which was only an interim refusal order. As it was reported that the land proposed to be enclosed belonged to the Someswaraswamy temple, there was some difficulty in deciding the ownership. The /settlement of the ownership question, so as to be within interim refusal order was therefore issued pending/the 6 weeks' time, as required by section 83 A of the Bangalore Municipal Law.

3 Two objection petitions were received, one from the Dharmakartha of the Someswaraswamy Temple and the other from the residents of Ulsoor through the Divisional Commissioner, Mr.Purushotham Naidu, protesting against sanction being accorded to enclose the land in question on the following grounds, inter alia:-

1.that the land in question belonged to the temple,

2.that apart from the ownership question, the proposed

proposed construction would cause much inconvenience to the temple and its devotees during ~~the~~ Car Festival and other occasions when Palanquins and Chariots are taken out in procession through the open space in front of the temple and the adjoining streets.

4 A detailed enquiry as to the ownership of the land in question shows that the title to the land has been with Mr.Seetharamiah and his predecessors in title since 1885, though the land has never been enclosed. Mr.Seetharamiah may therefore be deemed to be the owner of the land. But in view of the objections received from the public, I recommend that permission to enclose the land may be refused in the public interest under Section 83-A (1) of the Bangalore Municipal Law.

5 I await orders of the Hon'ble the Resident, in the matter, for the final disposal of Mr.Seetharamiah's application.

H.H. Cahalan

District Magistrate
and Assistant to the Resident

28/7/39

The Secretary,
to the Hon'ble the Resident in Mysore,
Bangalore. U.O.

No. R.331/1/39 Dated the 29 July, 1939.

OFFICE OF THE HON'BLE THE RESIDENT IN MYSORE, BANGALORE.
31 JUL. 1939
Diary No. 7837
File No.

6 I presume there can be no doubt that the enclosing of a compound with walls is not a building within the meaning of Sec 83A of the municipal laws.

31/7/39.

7

Sections 83 and 83-A use the expression "erect or re-erect any building". The word "building" has not been defined in the Municipal Law. But the expression has been defined in section 85. This clearly shows that construction of a compound wall does not come within the meaning of the section.

8

Building has been defined in Wharton's Law Lexicon as an "enclosure of brick or stone covered by a roof". In Bouvier's Law Dictionary, it is defined thus: "A building is an edifice erected by art, fixed upon or over the soil and composed of brick, marble wood or other proper substances connected together and designed for use in the position in which it is so fixed". Please see the definition of a building in section 3(4) of the Madras City Municipal Act.

9

There are numerous decisions on the point what is a building and whether erection of a compound wall comes within the meaning of the erection of a building. But they are all under Municipal Acts where the term has been defined. Please see the decision reported in A.I.R.Patna at page 56. That decision relates to the erection of a boundary wall. The expression "erect or re-erect any house not being a hut" is also defined in the Bengal Municipal Act. The learned Judges argued there that if a person is building a house for the first time or is re-building it, then the boundary wall which he proposes to build being part of the scheme of the house which he is erecting or re-erecting must fall within the scope of the section. In 1921 Bombay 62, it was held that erection of a stone compound wall is erecting a building within the meaning of the District Municipal Act because building has been defined in that Act as follows: "Building shall include any hut, shed, or other enclosure whether used as a human dwelling or otherwise, and shall include also walls, verandahs, fixed platforms, plinths door-steps and the like".

10

In all the circumstances it appears mere construction of ~~a~~ such a compound wall ~~not being~~ which is not a part of the scheme of the erection of a building, does not come within the scope of section 83 or section 83-A. It is not clear how the Municipal Commission have been interpreting these sections or whether Courts in the Station have given any ruling in the matter. Perhaps President, Municipal Commission, may be requested kindly to state his views on this aspect of the case.

ASRao
4.8.39

Secretary.
11

It appears to me that to include compound wall in the definition of Building is perfectly reasonable. Otherwise the Commission would have no power to prevent a man building a wall 50 ft high & obscuring out light & air from everyone else - except under other provisions of law, indirectly. Building is not defined in our law. In other laws where it is defined it is held to include wall. The petitioner can always take his case to the Courts, if he wishes: if he does & wins, we shall have to alter the law.

HRuberson
5/8/39.

P.17.C.46.

MUNICIPAL OFFICE * CIVIL & MILITARY * SECTION
No. Gc. 17/39.
5 AUG. 1939

President, Municipal Commission, Cantonment Station B'h

dated 5th Aug '39

12. I quite agree.

13. There is no doubt that under Section 85 (f) Bangalore Municipal Law a wall round a plot on which there is a house would be a "building". It would be unreasonable if a wall round a vacant plot is not to be considered a building: and it will be rather serious if we cannot control building of compound walls as we are doing at present.

14. Normally the term "building" should be all-inclusive unless definite exceptions are specified.

H.H. Carbutt

To

The Secretary to the Hon'ble the Resident in Mysore,
Bangalore.

U. O. No. Gt. 17/39 dated 16th August 1939.

Sec'y
18/8/39

15. Petition may be rejected - He can go to a Court if he wants to.

H Rivers.
18/8/39

OFFICE OF THE
HON'BLE THE RESIDENT
IN MYSORE, BANGALORE.
18 AUG. 1939
Diary No. 8596
File No.

Resident - 19/8

J.C

16 With reference to para 15 draft is submitted for approval. Presumably the merits of the petition also have been considered.

A.S.Rao
19.8.39

Secretary.

17

On reconsideration I think that, before passing orders, we might ask the Collector to give his personal opinion on the merits of the case. (I notice that the order was passed by his predecessor.) The reason for this suggestion is as follows. It is true that under Sec. 83-A Resident has discretion to refuse building for any reason in the scheduled areas and the conditions under which building is allowed under Sec. 83 do not apply. At the same time it ~~would~~ will be seen from para. 10 of the Resident's letter dated the 21st Oct.24 that the purpose of this addition to the Municipal Law was to prevent overcrowding and subsequent sanitary difficulties in areas near military land, and in d.o. of the 14th January 25, the Govt. of India suggested that as the powers under the new section ~~will~~ would be very wide and there ~~will~~ would be no appeal, the Resident might consider whether he could not devise some restrictions, possibly under Section 83 or otherwise, to the exercise of this power. We must have very good reasons to refuse permission to build a compound wall round a piece of vacant land belonging to him, as that wall by itself cannot cause any overcrowding or sanitary difficulties. If the building of the wall is going to lead to strained feelings in the locality or is likely to cause difficult situations during the festivals, then, of course, there is ample reason for refusing permission since the Resident's powers under the Section are not limited, but we should like to know, before passing final orders on the petition, ~~whether~~ that the objections of the local residents are bona fide and of substance. File may go once again to Collector.

S.N.4
F.565-23 'T'

* para.123 of notes. 'T'

Thulyar.
23/8/38.

18

Resident - Let this file go again to Collector for any further

c/o no. D. 8596-39/Stud/ dated 24th Aug. 1939.

I have inspected the place.

19

The plot which it is desired to enclose is a corner of a fairly large square in front of an important temple where large crowds gather for festivals. It would be undesirable to have the plane enclosed and it seems quite unnecessary.

H.H. Cubbon

COLLECTOR AND DIST.MAGISTRATE,
C.& M.STATION,BANGALORE.
20.9.39

To

The Secretary to the Hon'ble the Resident,
in Mysore, Bangalore.U.O.

U.O.No.R.331/1/39 Dated the 22nd September, 1939.

20 Petition may be rejected.

23/9/39.

Resident.

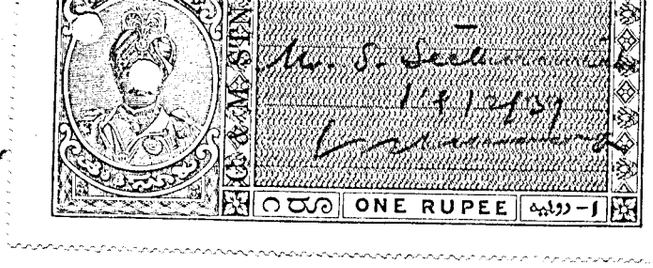
25/9

OFFICE OF THE
HON'BLE THE RESIDENT
IN MYSORE, BANGALORE.
25 SEP 1939
Diary No. 9947
File No.

S. No. (2) : Issue.

Record.

CORRESPONDENCE.



HON'BLE THE RESIDENT
IN MYSORE, BANGALORE.
Diary No. 1642
File No.

RFS 7405

Before the Hon'ble the Resident
in Mysore at Bangalore.

Humble petition of S. Seetharamiah, No. 21, Car Street, Ulsoor, C & M Station, Bangalore, sheweth:

1. That your petitioner applied on 14-11-'38 for permission to erect compound walls to his - premises No. 19, Someswara Koil Street.

2. That on or about the 30th November 1938, the District Magistrate and Assistant to the - Resident called for the title deeds of this - petitioner to prove his ownership to the land proposed to be enclosed which this petitioner duly submitted.

3. That on or about the 9th of January 1939, the District Magistrate and Assistant to the - Resident passed an order refusing the permission.

4. From the reference made in the latter order to wit: No. P. 494/38 dated 9-8-1938, - evidently there has been some mistake in regard to the matter as the application for permission was made by this petitioner long after the - aforesaid reference dated 9-8-1938, which can be seen from the earlier order calling for - title deeds. Copies of order are herewith submitted.

5. This petitioner further submits that the permission prayed for is only to enclose his land with compound walls, which so far

as the petitioner can see, cannot go against the policy underlying Section 83 A if the - said permission were granted.

6. This petitioner submits, for the privacy and sefety of his premises the said permission could have been granted, with any conditions - attached, if necessary.

This petitioner humbly prays therefore - that the matter may be reconsidered and the - permission prayed for granted to him.

S. Seetharamaiah

Bangalore,
Dated 14th February 1939.

Petitioner.

No. P 906/38

244—1,000—14—8—1938

Proceedings of the Hon'ble the Resident in Mysore,

BANGALORE.

Dated 30th NOVEMBER.....1938.

Read application dated the 14th November 1938 from Mr.S.Seetharamiah for permission to ~~erect~~ re-erect compound walls to his premises No.19, Someswara Koil Street, Ulsoor, as per plans submitted.

ORDER.

PERMISSION IS REFUSED.

Title deeds may be submitted to prove his owner-ship to the land proposed to be enclosed.

Sd/- C.F.V.Williams.

Office of the Dist. Magistrate
& Asstt. to the Resident,
C. & M. Station, Bangalore.

District Magistrate
&
Assistant to the Resident.

No. P 906/38

Dated 30 November 1938

Copy forwarded to Mr.S.Seetharamiah, 21, Car Street, Ulsoor, for information.

psg.30/11

for *President, Municipal Commission.*

30/11/38 30/11/38

112—1,000—11—4—1936.

No.....

Proceedings of the Hon'ble the Resident in Mysore,

BANGALORE.

Dated 9th Jan. 1939.

Read application dated Nil

from M. C. & M. Station for permission to erect / re-erect

a building like shed as called for in this office

No. R494/38 dt 9.8.38 for perusal & return

ORDER.

Permission is refused

(sd) C. F. V. Williams

Office of the Dist. Magistrate & Asstt. to the Resident, C. & M. Station, Bangalore.

District Magistrate & Assistant to the Resident.

No. P 906/1/38 dt 8.12.38

dt 9th January 1939

Copy forwarded to M. C. & M. Station, 2 Cpy & each

Subject for information

H. Lewis 9/1/39

President, Municipal Commission.

9/1/39

R.Dis.No.F.5-72-39
Judl.

Dated 29th August 1939

Issued 29/9/39 SSW 25/9

To

Mr. S. Seetharamiah,
No. 21 Car Street, Ulsoor,
Civil and Military Station,
Bangalore.

Reference his petition dated the 14th February 1939.

The Hon'ble the Resident sees no reason to interfere in the matter, and the petition is rejected.

Secretary to the Resident.

AsRao
19.8.39